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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,093	01/22/2002	Linh M. Bui	HO-P02206US0	3598

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EXAMINER

VU, JAKE MINH

ART UNIT	PAPER NUMBER
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1618

DATE MAILED: 08/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/054,093

Applicant(s)

BUI ET AL.

Examiner

Jake M. Vu

Art Unit

1618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-12 and 14-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-12 and 14-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Receipt is acknowledged of Applicant's Amendment filed on 06/12/2006. Claims 4 and 13 have been cancelled and claim 1 and 10 have been amended. Claims 1-3, 5-12, and 14-17 are pending in the instant application.

Double Patenting

Claims 1-3, 5-12 and 14-17 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over copending Application No. 10/264,886 and 10/891,895 **are maintained** for reasons of record filed on 02/10/2006 in the previous office action.

Claim Rejections - 35 USC § 102

Applicant's arguments with respect to linoleic acid versus conjugated linoleic acid have been fully considered and are persuasive. The §102 rejection has been **withdrawn**.

Claim Rejections - 35 USC § 103

Claims 1-3, 5-12 and 14-17 rejected under 35 U.S.C. 103(a) as being unpatentable over HAND et al in view of CUNNINGHAM **are maintained** for reasons of record filed on 02/10/2006.

Response to Arguments

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, Applicant argues that HAND teaches a product that is used for the reduction in plaque and teeth cleaning, not to promote weight management. The Examiner finds this argument unpersuasive, because HAND disclosed the typical pet food nutritional content for protein, carbohydrate, fat, and fiber, which are within Applicant's ranges in claim 1. CUNNINGHAM disclosed diacylglyceride from Econa oil lowers body fat. It would have been obvious to add diacylglyceride (DAG) into a typical pet food to decrease body fat.

Applicant argues that there is no motivation to combine. The Examiner finds this argument unpersuasive, because obesity poses a life-threatening problem to domesticated animals, such as mice, dogs, cats, and pigs.

Applicant argues that DAG has promising results in lowering fat in humans, but there is no mention or suggestion that DAG would work in domesticated animals. The Examiner finds this argument unpersuasive, because the person of ordinary skill in the art knows that animal studies are required before human studies can be conducted. Thus, it is obvious that the DAG must have showed promising results in animals.

Citation of Pertinent Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. PARK, et al (*Evidence that the trans-10, cis-12 isomer of conjugated linoleic acid induces body composition changes in mice*. Lipids. (1999) Vol. 34, No.3, pages 235-241) disclosed dietary conjugated linoleic acid has been shown to affect body composition, such as reduction in body fat and enhancement of fat-free mass, in mice, rats, and pigs.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

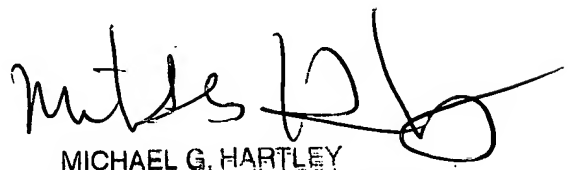
Telephonic Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jake M. Vu whose telephone number is (571) 272-8148. The examiner can normally be reached on Mon-Fri 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jake M. Vu, PharmD, JD
Art Unit 1618


MICHAEL G. HARTLEY
SUPERVISORY PATENT EXAMINER